

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

8 PAUL S. KLEIN,) 3:08-cv-00191-ECR-VPC
9 Plaintiff,)
10 vs.) ORDER
11 REID KIMOTO, et al.,)
12 Defendants.)

14 On February 22, 2011, Plaintiff filed a Motion (#271) for
15 Relief from Order (# 258)approving the Magistrate Judge's Report
16 and Recommendation (#252) filed on December 2, 2010. Pursuant to
17 the Report and Recommendation, our order (#258) denied Defendant's
18 Motion for Summary Judgment (#239). The Motion for Summary
19 Judgment was denied in favor of Plaintiff.

20 Plaintiff alleges in his present Motion (#271) that Count III
21 of the Amended Complaint (#12) was overlooked by Plaintiff,
22 Defendants, and the Court and must now be considered. Plaintiff
23 states that the Amended Complaint contained 17 counts and that
24 Count 17 was mislabeled as Count III. In the course of his
25 presentation, Plaintiff quotes Counts III of the Amended Complaint
26 which he alleges is an additional Count 17.

27 Count III of the Amended Complaint, which Plaintiff now would
28 apparently renumber as Count 17, was carefully and in detail
considered by the Magistrate Judge in her Report and Recommendation

1 (# 188) and found to be without merit. No objections were filed to
2 the Report and Recommendation by Plaintiff.

3 In our Order (#258), we affirmed the Magistrate Judge's
4 conclusions. A further consideration of the issue at this time
5 confirms that the order was correct. The allegation that this
6 claim was overlooked is not borne out by the record. The claim was
7 considered and ruled on.

8 Further, the Count 16 referred to in the Magistrate Judge's
9 Report and Recommendation need not be reinstated. The motion for
10 summary judgment by Defendants was denied on this issue.

11 There is no appropriate basis presented to reinstate any of
12 the dismissed claims.

13 In his motion (#271) and reply (#282)in support of the motion,
14 Plaintiff alleges that these underlying disciplinary documents for
15 the subject disciplinary hearing no longer exist; that Defendants
16 or their attorneys deleted them and then re-entered false and
17 fabricated disciplinary documents. This claim appears to be based
18 on Plaintiff's discovery and analysis of computer records. It is
19 not entirely clear how this allegation, if true, affects the one
20 remaining issue in the case, procedural due process as to whether
21 Plaintiff received Constitutional notice of the said disciplinary
22 hearing. It appears to the Court that claim might bear on whether
23 Plaintiff received notice of the true disciplinary charges when
24 notice was received. It also could bear on whether Plaintiff was
25 given notice of the hearing.

26 This issue concerning claimed falsification appears to involve
27 matter which should reasonably be considered at the trial of the
28 action. The matter shall not be decided on the basis of

1 Plaintiff's present conclusory allegations and analysis.
2 Plaintiff's claims, if true, to the extent stated do not, in and of
3 themselves, provide a basis to alter or amend any of the prior
4 orders of the Court.

5 Therefore, it is hereby ordered that Plaintiff's Motion (#271)
6 for relief from order is DENIED.

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10 Dated this 6th day of April 2011.

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EDWARD C. REED
Senior United States District Judge